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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,733	06/06/2007	Raphael Frans Caers	2005M015	1727

23455 7590 10/26/2010
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EXAMINER	
SACKEY, EBENEZER O	

ART UNIT	PAPER NUMBER
1624	

MAIL DATE	DELIVERY MODE
10/26/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/591,733	CAERS ET AL.	
	Examiner	Art Unit	
	EBENEZER SACKEY	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 August 2010*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/26/10*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

Claims 1-44 are pending.

This is in response to applicant's amendment and remarks filed on 08/26/10.

Information Disclosure Statement

The resubmitted 1449 of 04/09/07 (page 3 of 3) has been fully initialed and attached herewith.

Claim Rejections - 35 USC § 112

The rejection of claims 1-44 under 35 U.S.C. § 112 second paragraph has been withdrawn in view of the amendment to claim 1.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-44 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al., (U.S.Patent Number 6,583,324) for the reasons set forth in the previous office action mailed on 05/26/10.

4.

Response to Amendment

Applicant's arguments filed on 08/26/10 have been fully considered but they are not deemed persuasive. Applicants argue that Takai is generally directed to the production of aldehydes and does not teach or suggest the ratios as recited in claim 1 step (a) to (c). Applicant's remark is well taken however; this argument is far from being convincing because Takai teaches all the necessary starting material for preparing the aldehyde claimed herein. It is true that Takai does not teach the ratios claimed in applicant's invention. But the use of various ratios in known processes is very common in the art and therefore not considered an inventive step since ratios are routinely modified to improve yield and/or selectivity. Note *In re Boesch*, 205 U.S.P.Q. (1980). Moreover, U.S.Patent number 4,593,127 cited in the International report and filed by applicants attests to the use of various ratios in the preparation of butyraldehyde. See column 14, Table 7 for the propylene stream of 95.7 mole %. Please note this is not a new reference, but it is being applied for rebuttal purposes to show that various ratios in processes are routine in the art. Thus, applicants 97 mole% and a feed rate of at least 3 tonnes per hour is a matter of choice rather than an inventive step.

Applicants next argue that the Examiner cannot arrive at the instant invention without the benefit of impermissible hindsight. In response to applicants remarks, applicant must recognized that any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the purview of the skilled artisan at the time the claimed invention was made, and does not include knowledge gleaned only from applicants disclosure, such a reconstruction is proper. See *In re McLaughlin,* 443 F.2d 1392 170 U.S.P.Q. 209 (CCPA 1971). Additionally, it is well settled that consideration of a reference is not limited to the preferred embodiments or working examples but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art to a person of ordinary skill in the art. Furthermore, the rejection of record is not based on hindsight reconstruction because there is nothing of record or statement in Takai publication which states that butyraldehyde specifically cannot be made by the processes disclosed therein.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EBENEZER SACKEY whose telephone number is (571)272-0704. The examiner can normally be reached on 7.30-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ebenezer O. Sackey/
Patent Examiner, AU 1624.

/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624